

EXHIBIT 12

REDACTED

In the Matter Of:

In Re - Google Digital Advertising

[REDACTED]

November 03, 2023

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3

4 IN RE GOOGLE DIGITAL) Civil Action No.
5 ADVERTISING ANTITRUST) 1:21-md-03010-PKC
6 LITIGATION)

7)

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** HIGHLY CONFIDENTIAL **

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14 VIDEO RECORDED EXAMINATION OF

15

16

17 TAKEN ON

18

FRIDAY, NOVEMBER 3, 2023

19

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21

22

CERTIFIED STENOGRAPHER:

23 JESSIE WAACK, RDR, CRR, CCRR, NYRCR, NYACR,
CCR-NJ (No. 30XI008238700) CSR-TX (No. 11958)

24 CCR-WA (No. 21007264), CSR-CA (No. 14420),
REALTIME SYSTEMS ADMINISTRATOR

25 JOB NO.: 915335

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VIDEO RECORDED EXAMINATION of
[REDACTED], taken before JESSICA R. WAACK,
Registered Professional Reporter, Registered
Merit Reporter, Certified Realtime Reporter,
Registered Diplomat Reporter, California
Certified Realtime Reporter, New Jersey
Certified Court Reporter (License No.
30XI008238700); Texas Certified Shorthand
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Realtime Court Reporter and Notary Public of
Washington, D.C. and the States of New York,
Pennsylvania, Delaware, Maryland and
Virginia, at MoloLamken, 430 Park Avenue, New
York, New York, on Friday, November 3, 2023,
commencing at 9:05 a.m. and concluding at
5:35 p.m.

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24
25 --o0o--

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2 WITNESS: [REDACTED]

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18 INFORMATION REQUESTED

19 None

20

21 WITNESS INSTRUCTED NOT TO ANSWER

22 Page Line

23 80 18

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PROCEEDINGS

November 3, 2023, 9:05 a.m.

New York, New York

THE VIDEOGRAPHER: We are on the
record.

Today's date is November 3, 2023.

The time on the video is
9:06 a.m.

This is Video 1 in the deposition
of [REDACTED] in the -- in re:

Google Digital Advertising Antitrust
Litigation in the U.S. District Court,
Southern District of New York, Case
Number 1:21-MD-03010-PKC.

This deposition is taking place
at 430 Park Avenue, New York, New York.

The videographer is Dmitry
Zvonkov. The court reporter is Jessie
Waack, both with Lexitas.

All appearances will be noted on
the stenographic record.

Would the reporter please swear
in the witness.

[REDACTED] sworn

on oath and/or affirmed, called as a
witness herein, was examined and testified

as follows:

EXAMINATION

BY MR. GOODNOW:

Q. Good morning, [REDACTED]

A. Good morning.

Q. My name is Chris Goodnow. I'm
counsel for [REDACTED] who are
two plaintiffs in the multidistrict
litigation that was just announced.

Could you please state and spell
your name for the record?

A. My name is [REDACTED]. The
first name is [REDACTED]. I have a middle
name that I don't use very often, it's
[REDACTED]. My last name is

Q. Thank you. You recall you were
previously deposed by the Department of
Justice in October of 2021?

A. I recall being previously deposed

1 closer to bid CPM; is that correct?

2 A. I don't know what this document

3 is or...

4 Q. Do you see the final bullet under

5 auction dynamic changes?

6 A. Yes.

7 Q. And do you see that it says,

8 "[REDACTED] and [REDACTED] may be able to give us a

9 list of buyers they think have been most

10 exposed to RPO and DRS"?

11 A. I see that.

12 Q. Can you think of how you might

13 give a list of buyers that were most

14 exposed to RPO or DRS, how that would be

15 something that you could have done or

16 accomplished?

17 A. I don't know -- I don't know who

18 the author of this document is.

19 Q. That's -- that's fair.

20 A. I don't know what they mean by

21 "most exposed to RPO and DRS" in the sense

22 that those were features we launched, they

23 affected the buyers. It's not that --

24 yeah, I'm not sure quite what this person

25 intended.

1 Q. That's fine. I'm actually just
2 interested mainly in whether -- okay.

3 Let's ask you this: Do you -- as
4 we sit here today, do you feel that RPO and
5 DRS caused paid CPM to get closer to bid
6 CPM?

7 A. I wouldn't describe it like that.

8 Q. How would you describe it?

9 A. I think you could say that RPO
10 generally increased at the time, reserve
11 prices as appropriate to increase publisher
12 revenue.

13 And DRS -- and so RPO, in some
14 instance, could increase CPMs. But DRS
15 allowed transactions to occur that would
16 not have otherwise occurred. And so it's
17 not so much, like, prices going up, more
18 like prices going down.

19 Q. With respect to RPO or with
20 respect to DRS?

21 A. I think DRS is more like lowering
22 a price.

23 Q. And RPO?

24 A. RPO, one could say, is intended
25 to increase the price that buyers paid and

317

1 thereby increasing publisher revenue.

2 Q. How did RPO increase prices that

3 buyers paid?

4 A. Because the clearing price of an

5 auction could be determined by the reserve

6 price. In cases where auctions would

7 otherwise clear at very low prices --

8 excuse me, setting a higher reserve price

9 might increase the clearing price of such

10 an auction, and then thereby increase the

11 publishers' revenue.

12 Q. Okay. And with reserve price

13 optimization, was that Google increasing

14 the reserve price?

15 MR. RYBNICEK: Objection to form.

16 THE WITNESS: Meaning it was --

17 BY MR. ROSIN:

18 Q. Who increased the reserve price,

19 is what I'm asking, in RPO?

20 A. There was an algorithm that

21 determined -- the algorithm was developed

22 by Google --

23 Q. Okay.

24 A. -- employees, and the algorithm

25 predicted reserve prices.

1 Q. Okay. Thank you. Let's look at
2 another exhibit.

3 MR. ROSIN: How am I doing on
4 time? I want to make sure Serina has
5 some time.

6 Okay. We'll mark this
7 Exhibit 22, I believe.

8 (Whereupon, Exhibit 22 is marked
9 for identification.)

10 BY MR. ROSIN:

11 Q. This is GOOG-ADTCH-00028891 and
12 ending GOOG-ADTCH-00028902.

13 Now, this appears to be an email
14 chain; is that correct?

15 A. It does appear to have an email
16 chain.

17 Q. And do you see on the first page
18 here, you appear to be CC'd in that email?

19 A. Yes.

20 Q. Okay. I'm going to give you some
21 time to review this, because this is kind
22 of a complicated one. So maybe just take a
23 moment to look it over.

24 A. Okay. Thank you.

25 (Pause for reading/reviewing.)

1 BY MR. ROSIN:

2 Q. No, I understand that. If you

3 were hypothetically --

4 A. Sure --

5 Q. -- and --

6 A. -- but having never worked as a

7 buyer or building tools for buyers, my

8 modeling of buyers is somewhat imperfect,

9 my mental model of a buyer.

10 But I will also note that it

11 looks like in this thread that this

12 advertiser, [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. Okay.

16 MR. ROSIN: I'd like to -- I'd

17 like to strike that as nonresponsive.

18 MR. RYBNICEK: Objection.

19 BY MR. ROSIN:

20 Q. I'll just try the question one

21 more time.

22 If you were a buyer and Google

23 told you that it was going to use your true

24 value bid, your first price true value bid

25 to generate a new reserve price that was

1 going to be closer to that true value bid
2 than publishers' reserve price, would you
3 continue submitting your true value bids
4 into the auction?

5 MR. RYBNICEK: Objection to form.

6 THE WITNESS: It would depend
7 on -- with the same caveat about not
8 having been a buyer, not having
9 products for buyers, et cetera.

10 It would depend on how Google was
11 using that information, what their
12 pricing mechanism was, if it's instead
13 of publishers, it depends on what the
14 publisher pricing mechanism is and so
15 forth, right.

16 BY MR. ROSIN:

17 Q. Did RPO raise prices of ad
18 impressions?

19 A. Yes.

20 Q. Did RPO raise prices of ad
21 impressions by setting a new reserve price
22 that was closer to the top bid true value
23 bid than the publishers's reserve price?

24 A. Not necessarily. Sometimes the
25 publishers were setting higher reserve

1 prices than what RPO would calculate.

2 Q. RPO lowered reserve prices?

3 A. No. What I mean is that

4 sometimes the publishers' prices were very

5 high and RPO had no effect.

6 And also it is possible that some

7 publishers -- you know, the -- in the

8 counterfactual without RPO, some publishers

9 would have set some reserve prices

10 themselves rather than via RPO, which would

11 have had a different and potentially even

12 higher impact on -- on reserve prices,

13 which is why I say it depends on the

14 counterfactual.

15 Like what is the -- how exactly

16 is Google using it, what is their pricing

17 mechanism, what is the alternate publisher

18 pricing floor mechanism and algorithm.

19 Q. Okay. Sorry to do this, but

20 let's go back to Exhibit 1 again. Let's go

21 to page 243 this time. That's Bates number

22 ending in 166. Let's look at lines 9

23 through 23.

24 A. Uh-huh.

25 Q. I'm going to read this. So the

1 question is, well, a question starting

2 line 6 is:

3 "QUESTION: How would

4 transitioning to first price level the

5 playing field for all exchanges by removing

6 pricing shenanigans?"

7 This is in reference to something

8 that [REDACTED] said, and your answer at

9 line 9 is:

10 "ANSWER: I think one common form

11 of what [REDACTED] describes as pricing

12 shenanigans was exchanges representing

13 themselves as second price exchanges when,

14 in fact, they were operating as first price

15 or effectively first price. That's an

16 example of misleading auction dynamics that

17 I mentioned before. That could lead

18 advertisers to overpay."

19 Do you still stand by that

20 statement?

21 MR. RYBNICEK: If you need to

22 read additional context to understand

23 the context of that answer, you should.

24 THE WITNESS: I think that I

25 still believe that an exchange that

1 represented sort of a second price

2 when, in fact, it was operating as

3 first price or effectively first price

4 is indeed misleading.

5 BY MR. ROSIN:

6 Q. Thank you.

7 Do you think that could leave --

8 A. However.

9 Q. Sorry. Go ahead.

10 A. However, I was going to say, I do

11 not believe that's what AdX was doing.

12 Q. I'm sorry. I didn't catch that.

13 A. I should also note that I don't

14 believe that's what AdX is doing even in

15 this example.

16 Q. You don't believe that with

17 reserve price optimization or at least more

18 specifically in this example of this past

19 exhibit we were looking at, that they --

20 that the buyer [REDACTED] was mistakenly

21 believing they were bidding into a second

22 price option when, in fact, they were

23 bidding into something that was much closer

24 to a first-price auction?

25 A. I don't believe that it was

1 operating as first price or effectively

2 first price.

3 Q. Do you believe that it was

4 operating as closer to first price than

5 second price in that instance?

6 A. I do not -- closer to first price

7 than second price.

8 Overall in the specific case of

9 [REDACTED], I would probably need to analyze

10 their data more. It's hard from a graph

11 like this to conclude anything because the

12 dots all go together.

13 Overall is it closer to first

14 price than second price? I don't think one

15 can conclude that from -- this graph that's

16 here.

17 Q. Let's not -- let's not limit

18 ourselves to the graph. Let's go back to

19 the last exhibit we were looking at,

20 this -- ending -- the 00028891 exhibit.

21 A. Yeah.

22 Q. I think that was 21.

23 A. Exhibit 22.

24 Q. Thank you, 22.

25 At 891, really the first -- first

REPORTER CERTIFICATE

I, the undersigned, do hereby certify:

That [REDACTED] was by me duly sworn
in the within-entitled cause; that said
deposition was taken at the time and place
herein named; and that the deposition is a
true record of the witness's testimony as
reported by me, a disinterested person, and
thereafter was transcribed.

I further certify that I am not
interested in the outcome of the said
action, nor connected with, nor related to
any of the parties in said action, nor to
their respective counsel.

IN WITNESS WHEREOF, I have hereunto set
my hand this 6th day of November, 2023.

Signature: __Requested__ Waived__ Not Requested

JESSICA R. WAACK

Registered Diplomate Reporter

Certified Realtime Reporter

California Certified Realtime Reporter

New York Realtime Court Reporter

New York Association Court Reporter

Notary Public, State of New York

CCR-NJ (No. 30XI008238700) CSR-TX (No. 11958)

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